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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MONIKA MAKELOVA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71373

Agency No. A78-758-763

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON, and TALLMAN, Circuit Judges.

Monika Makelova, a native and citizen of Slovakia, petitions for review of the Board of Immigration Appeals' summary affirmance without opinion of an Immigration Judge's ("IJ") order denying her applications for asylum and

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal and for protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the IJ’s decision for substantial evidence, *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995), and we deny the petition for review.

The record does not compel the conclusion that the government was unable or unwilling to control the men who attacked and raped Makelova. Makelova testified that she did not report the incident to police and there is no other evidence in the record to show the government was aware of the crimes perpetrated against her. *See Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004) (holding that where persecution is inflicted by non-governmental actors, the court will consider whether an applicant reported the incident to the police, because a report of this nature may show governmental inability to control the actors).

As Makelova is unable to meet her burden of proof for asylum, she necessarily fails to meet the higher burden of proof for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Substantial evidence supports the IJ’s denial of relief under the CAT. *See Zheng v. Ashcroft*, 332 F.3d 1186, 1193 (9th Cir. 2003).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.